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Drawing Amendments

A complete set of replacement drawings, consisting of Figures 1-12, is submitted herewith and should be substituted for the drawings currently on file.

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REMARKS

The Office Action dated April 29, 2005, has been reviewed in detail and the application has been amended in the sincere effort to place the same in condition for allowance. Reconsideration of the application and allowance in its amended form are requested based on the following remarks.

Applicant retains the right to pursue broader claims under 35 U.S.C. §120.

Applicant has provided a unique solution with respect to problems regarding BEVERAGE BOTTLING PLANT FOR FILLING BOTTLES WITH A LIQUID BEVERAGE FILLING MATERIAL, AND A CONTAINER FILLING PLANT CONTAINER INFORMATION ADDING STATION, SUCH AS, A LABELING STATION HAVING A GRIPPER ARRANGEMENT, CONFIGURED TO ADD INFORMATION TO CONTAINERS, SUCH AS, BOTTLES AND CANS. Applicant's solution is now claimed in a manner that satisfies the requirements of 35 U.S.C. §102 and §112.

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Allowable Subject Matter:

Applicant acknowledges the allowability of Claims 10-13, which are believed to be in condition for allowance as these claims are believed to conform to the requirements of U.S. Patent and Trademark Office practice, as stated below.

Claims 26-29 were also indicated as being allowable, but have been canceled herein without prejudice.

Rejection of Claims 14-16 and 19-25 Under 35 U.S.C. §102:

Claims 14-16 and 19-25 were rejected under 35 U.S.C. §102, as being unpatentable over Lerner et al., U.S. Patent 4,412,876. Generally, the Examiner stated that Lerner showed all of the claimed limitations. Claims 14-16 and 19-29 have been canceled herein, without prejudice. New Claims 30-44 will be discussed herein with respect to the applied prior art reference.

Lerner, as best understood, shows a labeling machine for labeling bottles using an endless sleeve or tube of labels. In general, the tube of labels is fed to an opening device that opens up the tube of labels. A gripper jaw mechanism 250 is then moved into

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position to grip the open label and place the label around a bottle. The mechanism 250 has movable jaws 264 that clamp the label against the fixed jaws 262. The movable jaws 264 move linearly back and forth to correspondingly open and close the gap between the movable jaws 264 and the fixed jaws 262 in order to receive, clamp, and then release a sleeve label. As best understood, Lerner teaches the use of one type of sleeve label for the gripper mechanism 250. Lerner does not teach or suggest adjusting the movable jaws 264 to accommodate sleeve labels of differing diameters for bottles of differing diameters.

New Claim 30 recites:

A method of operating a container filling plant container labeling station having a sleeve label adding arrangement, configured to add a label to a container, said container labeling station comprising:
an arrangement being configured and disposed to open a continuous tube of uncut sleeve labels;
apparatus being configured and disposed to advance a tube of sleeve labels;
apparatus being configured and disposed to cut a sleeve label from a tube of uncut sleeve labels; and
a sleeve label adding arrangement being configured and disposed to add an open sleeve label about a container to be labeled;
said sleeve label adding arrangement comprising:
a sleeve label holding and releasing structure comprising a first portion and a second portion together being configured and

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disposed to permit holding open of an open sleeve label and to permit releasing of an open sleeve label about a container to be labeled;

 said first portion being configured and disposed to hold and to release a first portion of an open sleeve label;

 said second portion being configured and disposed to hold and to release a second, different, portion of an open sleeve label; and

 an adjustment and securing arrangement being configured and disposed to adjust and then to secure said sleeve label holding and releasing structure in a first position which corresponds to a diameter of a first type of sleeve label for a first type of container, and being configured and disposed to adjust and then to secure said sleeve label holding and releasing structure in a second position which corresponds to a diameter of a second type of sleeve label for a second type of container, which diameter of said second type of sleeve label is different than the diameter of said first type of sleeve label; said method comprising the steps of:

 labeling a plurality of a first type of container, wherein said step of labeling said plurality of a first type of container comprises the steps of:

 adjusting and then securing said first and second holding and releasing portions with said adjustment arrangement in a first position which corresponds to a diameter of a first type of sleeve label for the first type of container;

 opening a continuous, collapsed, uncut tube of the first type of sleeve labels;

 advancing the continuous tube of the first type of sleeve labels;

 cutting a sleeve label from the continuous tube of the first type of sleeve labels;

 holding the open sleeve label with said first and second holding and releasing portions;

 positioning the open sleeve label about one of the first type of containers with said first and second holding

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and releasing portions;
releasing the open sleeve label from said first and second holding and releasing portions; and
repeating the above steps for subsequent containers of said plurality of the first type of container;
stopping labeling upon labeling a desired number of said plurality of the first type of container;
selecting a second type of container to be labeled;
labeling a plurality of the second type of container, wherein said step of labeling said plurality of the second type of container comprises the steps of:
adjusting and then securing said first and second holding and releasing portions with said adjustment arrangement in a second position which corresponds to a diameter of a second type of sleeve label for the second type of container, which diameter of the second type of sleeve label is different than the diameter of the first type of sleeve label; and
repeating the steps for placing the first type of sleeve label on said plurality of the first type of container to place the second type of sleeve label on said plurality of the second type of container.

It is respectfully submitted that Lerner does not teach or suggest many of the above steps, such as, for example:

"adjusting and then securing said first and second holding and releasing portions with said adjustment arrangement in a first position which corresponds to a diameter of a first type of sleeve label for the first type of container;" and

"adjusting and then securing said first and second holding and releasing portions with said adjustment arrangement in a second position which corresponds to a diameter of a second type of sleeve label for the second type of container, which diameter of the second type of sleeve label is different than the

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diameter of the first type of sleeve label."

In view of the above, it is respectfully submitted that Claim 30 distinguishes over and is not rendered obvious by Lerner. Claims 31-34 are also believed to distinguish over Lerner based on their dependence from Claim 30 and the distinguishing features disclosed therein.

New Claim 35 recites:

A container filling plant container labeling station having a sleeve label adding arrangement, configured to add a label to a container, said container labeling station comprising:

an arrangement being configured and disposed to open a continuous tube of uncut sleeve labels;

apparatus being configured and disposed to advance a tube of sleeve labels;

apparatus being configured and disposed to cut a sleeve label from a tube of uncut sleeve labels;

a sleeve label adding arrangement being configured and disposed to add an open sleeve label about a container to be labeled; and

said sleeve label adding arrangement comprising:

a sleeve label holding and releasing structure comprising a first portion and a second portion together being configured and disposed to permit holding open of an open sleeve label and to permit releasing of an open sleeve label about a container to be labeled;

said first portion being configured and disposed to hold and to release a first portion of an open sleeve label;

said second portion being configured and disposed to hold and to release a second, different, portion of an open sleeve label; and

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an adjustment and securing arrangement being configured and disposed to adjust and then to secure said sleeve label holding and releasing structure in a first position which corresponds to a diameter of a first type of sleeve label for a first type of container in a first labeling process, and being configured and disposed to re-adjust and then re-secure said sleeve label holding and releasing structure in at least a second position which corresponds to a diameter of at least a second type of sleeve label for at least a second type of container in at least a second labeling process, which diameter of the at least second type of sleeve label is different than the diameter of the first type of sleeve label.

Similar to Claim 30, Claim 35 recites in contrast to Lerner the following:

"an adjustment and securing arrangement being configured and disposed to adjust and then to secure said sleeve label holding and releasing structure in a first position which corresponds to a diameter of a first type of sleeve label for a first type of container in a first labeling process, and being configured and disposed to re-adjust and then re-secure said sleeve label holding and releasing structure in at least a second position which corresponds to a diameter of at least a second type of sleeve label for at least a second type of container in at least a second labeling process, which diameter of the at least second type of sleeve label is different than the diameter of the first type of sleeve label."

In view of the above, it is respectfully submitted that Claim 35 distinguishes over and is not rendered obvious by Lerner. Claims 36-44 are also believed to distinguish over Lerner based on their dependence from Claim 35 and the distinguishing features disclosed

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therein.

In view of the above, reconsideration and withdrawal of the present rejection is respectfully requested.

Rejection of Claims 10-13 and 20-29 Under 35 U.S.C. §112.

Second Paragraph:

Claims 10-13 and 20-29 were rejected under 35 U.S.C. §112, second paragraph as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. Specifically, the Examiner stated that, based on the structure of the claims, that the Applicant is attempting to draft the claims as means plus function claims, and that if such is the case, the claims be amended in accordance with MPEP 2181-2 to properly recite means plus function language.

In response, it is respectfully submitted that the claims have not been drafted as means plus function claims and there is no intent to do so at this time. In addition, it is respectfully submitted that the claims have been drafted in accordance with U.S. Patent and Trademark Office rules as set forth in MPEP §2173.01, entitled "Claim

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Terminology," which states:

A fundamental principle contained in 35 U.S.C. 112, second paragraph is that applicants are their own lexicographers. They can define in the claims what they regard as their invention essentially in whatever terms they choose so long as **>any special meaning assigned to a term is clearly set forth in the specification. See MPEP § 2111.01.< Applicant may use functional language, alternative expressions, negative limitations, or any style of expression or format of claim which makes clear the boundaries of the subject matter for which protection is sought. As noted by the court in In re Swinehart, 439 F.2d 210, 160 USPQ 226 (CCPA 1971), a claim may not be rejected solely because of the type of language used to define the subject matter for which patent protection is sought.

Further, MPEP §2173.05(g), entitled "Functional Limitations," states:

A functional limitation is an attempt to define something by what it does, rather than by what it is (e.g., as evidenced by its specific structure or specific ingredients). There is nothing inherently wrong with defining some part of an invention in functional terms. Functional language does not, in and of itself, render a claim improper. In re Swinehart, 439 F.2d 210, 169 USPQ 226 (CCPA 1971).

A functional limitation must be evaluated and considered, just like any other limitation of the claim, for what it fairly conveys to a person of ordinary skill in the pertinent art in the context in which it is used. A functional limitation is often used in association with an element, ingredient, or step of a process to define a particular capability or purpose that is served by the recited element, ingredient or step. Whether or not the functional limitation complies with 35 U.S.C. 112, second paragraph, is a different issue from whether the limitation is properly supported under 35 U.S.C. 112, first paragraph, or is distinguished over the prior art. A few examples are set forth below to illustrate situations where the issue of whether a functional limitation

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complies with 35 U.S.C. 112, second paragraph, was considered.

It was held that the limitation used to define a radical on a chemical compound as "incapable of forming a dye with said oxidizing developing agent" although functional, was perfectly acceptable because it set definite boundaries on the patent protection sought. *In re Barr*, 444 F.2d 588, 170 USPQ 33 (CCPA 1971).

In a claim that was directed to a kit of component parts capable of being assembled, the Court held that limitations such as "members adapted to be positioned" and "portions . . . being resiliently dilatable whereby said housing may be slidably positioned" serve to precisely define present structural attributes of interrelated component parts of the claimed assembly. *In re Venezia*, 530 F.2d 956, 189 USPQ 149 (CCPA 1976).

In view of the above, it is respectfully submitted that the Claims 10-13 and new Claims 30-44 have been drafted in a manner that complies with the requirements of 35 U.S.C. §112, second paragraph, and reconsideration and withdrawal of the present rejection is respectfully requested.

Objection to the Claims:

The claims were objected to as being incorrectly numbered as Claims 17 and 18 were omitted from the previous amendment. In response, Claims 14-29 have been canceled herein without prejudice and new Claims 30-44 have been submitted herein.

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Objection to the Specification:

In response to the objection to the specification, a new Abstract is submitted herewith on a separate sheet and the application has been reviewed and any typographical errors discovered have been corrected herein.

Objection to the Drawings:

The drawings were objected to, in general, as being of insufficient quality with respect to line weight, etc. In response thereto, a set of replacement drawings is enclosed herewith.

Art Made of Record:

The prior art made of record and not applied has been carefully reviewed, and it is submitted that it does not, either taken singly or in any reasonable combination with the other prior art of record, defeat the patentability of the present invention or render the present invention obvious. Further, Applicant is in agreement with the Examiner that the prior art made of record and not applied does not appear to be material to the patentability of the claims currently pending in this application.

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In view of the above, it is respectfully submitted that this application is in condition for allowance, and early action towards that end is respectfully requested.

Summary and Conclusion:

It is submitted that Applicant has provided a new and unique BEVERAGE BOTTLING PLANT FOR FILLING BOTTLES WITH A LIQUID BEVERAGE FILLING MATERIAL, AND A CONTAINER FILLING PLANT CONTAINER INFORMATION ADDING STATION, SUCH AS, A LABELING STATION HAVING A GRIPPER ARRANGEMENT, CONFIGURED TO ADD INFORMATION TO CONTAINERS, SUCH AS, BOTTLES AND CANS. It is submitted that the claims, as amended, are fully distinguishable from the prior art. Therefore, it is requested that a Notice of Allowance be issued at an early date.

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Respectfully submitted,



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